

EXHIBIT**E**

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D129947465



CLERK OF COURTS
 HAMILTON COUNTY, OH
 COMMON PLEAS

2020 SEP 30 P 1:04

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5 **COURT OF COMMON PLEAS**
 6 **HAMILTON COUNTY, OHIO**

7 CITY OF CINCINNATI,
 8 Plaintiff,

Case No.: A1905588

9 vs.
 10 JOHN KLOSTERMAN, ET. AL.

11 **DEFENDANT'S MOTION TO AMEND
 12 OR ALTER JUDGMENT**

13 Defendants

14 **DEFENDANT'S MOTION TO AMEND OR ALTER JUDGMENT**

15 Plaintiff, JOHN KLOSTERMMAN, files this Motion to Amend Order and Judgment
 16 pursuant to FED. R. CIV. P. 52(b), 59(e) or, in the alternative, FED. R. CIV. P. 60 and
 17 respectfully asks the Court to amend its Order and Judgment dismissing as moot his claims
 18 against plaintiff, THE CITY OF CINCINNATI, and to re-open the case for the purpose of
 19 adjudicating his claim for damages resulting from losses he has suffered through this Plaintiff's
 20 appointment of a corrupt and clearly self-serving Receiver. In support of this Motion, Plaintiff
 21 KLOSTERMAN states the following:

22 **Facts**

23 On September 16th, 2020, the Court issued it Order and Judgment, denying Defendants' Motion
 24 to Replace Receiver and Tri-State Organization, allegedly granting this order based on the
 25 merits of Plaintiff's Memorandum in Opposition to Defendant's Motion to Replace Receiver.
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1 However, this Court's order, was very vague and simply stated that defendant's motion was not
2 "well-taken."

3 The issue that arises is that this Defendant's request for injunction has not been ruled on
4 and Defendant further asserts should the merits of his allegations be weighed thoroughly and
5 thoughtfully again by the officers of this Court, then he believes that his arguments will be seen
6 in a substantially more fair and unbiased light. Defendant, KLOSTERMAN now seeks an order
7 from the Court reopening his case awarding him the injunction he initially sought, which
8 included vacation of the Receiver along with his appointed management company, Tri-State
9 Organization.

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11 **Argument**

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13 **I. Standard of Review**

14 Under FED. R. CIV. P. 59(e), a party may file a motion to alter or amend a judgment
15 no later than 15 days after entry of the judgment. Motions to amend or alter the
16 judgment should be granted when there exists "a manifest error of law or fact, so as to
17 enable the court to correct its own errors and thus avoid unnecessary appellate
18 procedures." Meghani v. Shell Oil Co., 2000 U.S. Dis. LEXIS 17402 *2, (S.D. Tex.
19 Aug. 24, 2000) (citing Divane v. Krull Elec. Co., Inc., 194 F.3d 845, 848 (7th Cir.
20 1999) (internal citations omitted)); see also Kyle v. Texas, 2006 WL 3691204 (W.D.
21 Tex. Oct. 31, 2006) (granting a motion to reconsider under FED. R. CIV. P. 59(e) and
22 reversing the court's previous denial of a motion to remand based on a manifest error
23 of law)). A court has discretionary authority to amend its prior decision. See Weber v.
24 Roadway Exp., Inc., 199 F.3d 270, 276 (5th Cir. 2000). Fed. R. Civ. P. 60(a) further
25 provides that "[t]he court may correct a clerical mistake or a mistake arising from
26 oversight or omission whenever one is found in a judgment, order, or other part of the
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1 record. The court may do so on motion or on its own, with or without notice." Under
2 Fed. R. Civ. P. 60(b), the Court may relieve a party from a final judgment or order if
3 a mistake was made or any other reason that justifies relief. 1 1 To the extent that the
4 Court's Order Concerning Pending Motions was intended to incorporate or substitute
5 as findings of fact and conclusions of law, Defendant asks the Court to amend its
6 findings and conclusions to correct.
7

8 **II. The Court's Order and Judgment did not Address State Defendants' request for**
9 **injunction and vacation of the Receiver along with Tr-State Organization**

10 See 42 U.S.C. § 2000d; see also Alexander v. Sandoval, 532 U.S. 275, 279 (2001)
11 (holding that private individuals may sue under Title VI to obtain both injunctive
12 relief and damages). Article III of the U.S. Constitution prohibits courts from ruling
13 on nonjusticiable controversies, including cases in which the controversy has become
14 moot. See Flast v. Cohen, 392 U.S. 83, 95 (1968). However, a case involving a claim
15 for relief that has yet to be determined is not moot. See Gulf Pub. Co. v. Lee, 679
16 F.2d 44, 46 n.2 (5th Cir. 1982) ("Claims for relief ordinarily prelude a finding of
17 mootness unless the parties have settled the case."); see also 13A Wright, Miller &
18 Cooper, Federal Practice and Procedure § 3533.3 at 262 (2d ed. 1984) ("Relief should
19 be denied on the merits, not on grounds of mootness."). Even in cases where one of
20 the several issues presented becomes moot, the remaining live issues fulfill the
21 constitutional requirement of a case or controversy. Powell v. McCormack, 395 U.S.
22 486, 497 (1969). manifest errors of law and fact consistent with the arguments in this
23 motion. Under FED. R. CIV. P. 52(b), a motion to amend findings of fact and
24 conclusions of law must be predicated on the need to correct manifest errors of law or
25 fact. Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986). A district
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court should correct its findings and conclusions when its judgment is not guided by sound legal principles such as: 1) when a court relies on clearly erroneous fact findings; 2) relies on erroneous conclusions of law; or 3) misapplies its factual or legal conclusions. Alcatel U.S.A., Inc. v. DGI Techs, Inc., 166 F.3d 772, 790 (5th Cir. 1999).

As discussed in Defendant's Motion to Replace Receiver and Tri-State Organization, Defendant KLOSTERMAN asserted several facts that were either blatantly not ruled on or simply ignored by this court. The allegations are as follows:

1. *The manner in which the City obtained and levied fines and penalties was a result of a conspiracy in which the city and its employees did utilize their positions under color of authority to amass overwhelming fines upon the Defendant (excess of \$550,000) that once the City obtained their judgment, the Defendant would be forced to divest of his properties. Defendant asserted these actions were theft by deception, misrepresentation, and fraud.*
2. *Defendant asserts the Court's use of the receiver statute R.C. ss2735.01(A)(1) was never intended to allow the sovereign City of Cincinnati to force the sale of private property for accumulated fines and levies. He further asserts the intent of this statute was to protect interested parties such as "partners and creditors" and only insofar, as "the property is in danger of being lost or removed or materially injured.*
3. *By denying the Defendant his real property rights through the application of the receiver statute in this manner is further evidence of the singling out and disparate treatment of said Defendant by the Plaintiff. In this matter, there are no tenants complaining, all utilities are on, repairs are made in a timely manner and*

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3 Dated this 30TH day of September, 2020.
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7 Plaintiff in Pro-Se
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D132711373

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



CITY OF CINCINNATI, : Case No. A 1905588
Plaintiff, :
v. :
Judge Wende C. Cross
JOHN KLOSTERMAN et al., :
Defendants. : ENTRY DENYING DEFENDANT'S
: MOTION TO AMEND OR ALTER
: JUDGMENT
:

This matter having come before the Court pursuant to the Defendant's Motion to Amend or Alter Judgment (the "Motion"), and the Court upon consideration thereof, and being fully advised in the Premises, finds said Motion not well taken. For good cause shown, the Court **DENIES** the Motion.

IT IS SO ORDERED.

Date: 8/17/2021

Wende C. Cross
JUDGE WENDE C. CROSS